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Supreme Court of the United States

October Term, 1951.

No. 335

REV. I. C. PEAY, B. F. BOURN, REV. J. H. MAYS, R. C. JONES, DR. CHARLES W. SMITH, B. L. NEAL, C. S. KELLY, REV. C. P. PAYNE, DR. J. T. FIKES, JOE KNOX, SR., JOE KNOX, JR., MILTON BARNES, ALFONSO CLARK, R. H. HOWZE, AND E. H. SMITH,

Petitioners,

versus

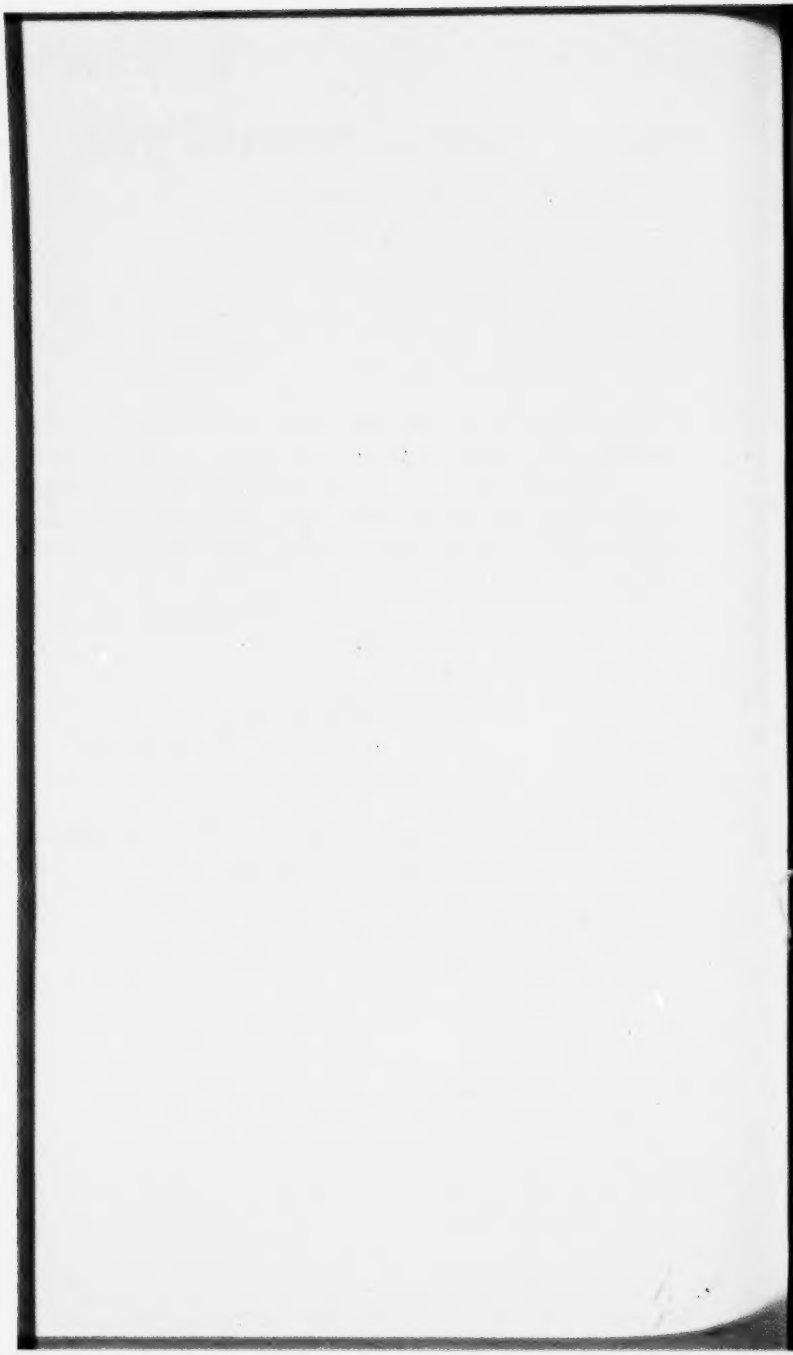
L. M. COX, REGISTRAR,

Respondent.

PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF.

.....,
Attorney for Petitioners.

THOMAS C. HANNAH,
Of Counsel.



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Petitioners,

versus

L. M. COX, REGISTRAR,

Respondent.

PETITION FOR WRIT OF CERTIORARI.

MAY IT PLEASE THE COURT:

Your petitioners, Rev. I. C. Peay and others named above, colored citizens of Forrest County, Mississippi, respectfully petition this Honorable Court for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit.

STATEMENT OF THE MATTER INVOLVED.

Only one question is presented for decision: Must petitioners and other colored citizens of Forrest County, Mississippi, qualified under the Constitution and laws of the State of Mississippi and of the United States to register and vote, and for whom this suit is prosecuted, exhaust their State-provided administrative and judicial remedies in an effort to register and vote, and fail, before seeking injunctive relief in the proper Federal District Court against the Registrar of voters to force such Registrar to register them when he declines and refuses to register them because of their race and color?

The District Court (R. 16) held that they are required so exhaust such remedies and dismissed their cause. The United States Court of Appeals, by judgment rendered June 21, 1951, also held (R. 24, 32) that such remedies must first be exhausted; but that Court reversed the District Court and remanded the cause for the purpose of allowing petitioners and other colored citizens again to ask Registrar to register them and, being again denied that right, to pursue such remedies.

By orders of the Board of Supervisors of said Forrest County, Mississippi, made in November and December, 1949, (R. 9) respondent Registrar was required to make a new registration of voters for the County for use in all elections to be held in the County after June 1, 1950; and, registration being a prere-

quisite to voting in Mississippi, both white and colored citizens of the County at once began to apply to Registrar to be allowed to register. Petitioners and many other colored citizens of the County applied, along with white citizens of the County, to register. All of your petitioners are able to read any section of the Constitution of Mississippi, and several of them are college-trained and professional men (R. 5). When petitioners and all other colored citizens applied to register, Registrar, pretening to act under Section 244 of the Constitution of Mississippi which requires that a person, to vote, shall "be able to read any section of the Constitution of this State; or he shall be able to understand the same when read to him or give a reasonable interpretation thereof" (R. 4), in all instances examined them as to the meaning of certain sections of the State Constitution; and as to petitioners and nearly all other clored citizens he expressed dissatisfaction with their answers incident to such examinations and refused to allow them to register (R. 5). Registrar pretended to believe that an applicant to register to vote must in all instances be able to read any section of the State Constitution, but he does not examine any white citizens in the particular (R. 5). He so examines only colored citizens; and this practice on his part is designed solely to prevent colored citizens of the County from registering and voting, regardless of their qualifications; and such does prevent them from registering and voting. While there are almost as many colored citizens in the County as there are white citizens, several thousand white citizens have been allowed to register in the

new registration; but not more than 50 colored citizens have been allowed to register (R. 5). This practice is made by Registrar in the face of a clarifying Legislative enactment, Section 3213 of the Mississippi Code of 1942, providing that "a person shall not be registered unless he be able to read any section of the Constitution, or, in case he cannot read, unless he be able to understand any section thereof when read to him, or give a reasonable interpretation thereof", and still another clarifying statute, Section 3235 of the same Code, that "every inhabitant of this State * * * * who is able to read any section of the Constitution of the State, or, if unable to read the same, who is able to understand the same when read to him, or give a reasonable interpretation thereof * * * * shall be entitled to vote".

By other statutes of the State, it is provided that a person denied by the Registrar the right to register to vote may appeal to the election commissioners of the County (Section 3224 of Mississippi Code of 1942) and, if there denied the right to register, may appeal to the Circuit Court of the County (Section 3227 of the Code) by bill of exceptions embodying the evidence in the case and the findings of the commissioners, within two days after the rendition of the decision, by giving a bond in the sum of $100.00 conditioned to pay all costs in case of an adverse decision (Section 3228 of Code) and then may appeal to the Supreme Court of the State (Section 3227 of Code) by giving bond in the sum of $500.00 also conditioned to pay all costs in case of an adverse decision there. The two

Courts have no discretion as to the facts. They merely determine what law is applicable to the facts as found by the commissioners and the effect of that law incident to the rights of the elector so denied the right to register. The election commissioners meet regularly on the third Monday of July in three of every four years and on the first Monday in October in two of said three years, that is, the commissioners meet five times every four years; and the Circuit Court sits four times each year, in January, April, July and November; but appeals from the election commissioners are not preference cases.

Petitioners did not, nor did any other colored citizens of the County applying and being denied the right to register, appeal to the election commissioners and of course did not appeal to the Circuit and Supreme Courts. Rather, they filed this cause in the Federal District Court for injunctive relief, taking the position that, Registrar having denied them the right to register, not through mistake or error of law, but through an intentional and flagrant disregard of the law and designed discrimination against them on account of their race and color, and each individual colored citizen of the several thousand in the County having to appeal to the commissioners and then to the Circuit Court and then to the Supreme Court at an enormous expense in the aggregate and with much delay, they should not in equity and right and good conscience be required to pursue and exhaust said State-provided remedies before seeking Federal Equity assistance.

THIS COURT HAS JURISDICTION.

The United States Court of Appeals "has decided a Federal question in a way probably in conflict with applicable decisions of this Court" (Supreme Court Rule 38, paragraph 5, b). It is true that this Court has repeatedly held that ordinarily a suitor must exhaust his administrative remedies before seeking relief in the Federal Courts; but it has also held that, where the wrong complained of is "not a mere mistake or error * * * * but a systematic and intentional disregard of such laws by the State officers for the purpose of destroying the rights of the whole class, * * * * it follows that such class wrong and disregard of the State statute gave rise to the right to invoke the interposition of a Court of Equity in order that an adequate remedy might be afforded". *United States v. Board of County Commissioners of Osage County, Okla., et al.*, 251 U. S. 128, 40 S. Ct. 102, 64 L. Ed. 184, and other cases to be cited in brief. This Court has jurisdiction under Section 1254 (1) of Title 28 of United States Code Annotated.

THE QUESTION PRESENTED.

Must petitioners and other colored citizens of Forrest County, Mississippi, several thousand in number, denied the right to register and vote because of their race and color through what amounts to fraud on the part of Registrar, a right given to them by the Fifteenth Amendment to the Constitution of the United

States, take the three long and expensive steps provided by State statutes before being allowed Federal Equity relief to force said Registrar to comply with the plain letter and meaning of the law, so plain, in fact, that "Wayfaring men, though fools", need "not err therein"?

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT.

It inheres in Federal Equity Courts, as well as in State Equity Courts, to take cognizance of justiciable wrongs for the purpose of affording an adequate remedy to a complaining party or parties. In the absence of Federal Equity assistance, every one individually of the several thousand colored citizens concerned, in no particular derelict, must appeal to the election commissioners and then to the Circuit Court and then to the Supreme Court at an enormous expense in the aggregate and at much delay. The Legislature of the State of Mississippi could not have contemplated, and did not contemplate, such a shocking class wrong in enacting such appeal statutes; or, if it did contemplate such, the enactments would, and should be held to be, unconstitutional and void.

Respectfully Submitted,

....., Attorney for Petitioners.

Thomas C. Hannah

THOMAS C. HANNAH,
Of Counsel.

SUPREME COURT OF THE UNITED STATES

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No. .....

REV. I. C. PEAY, B. F. BOURN, REV. J. H. MAYS, R. C. JONES, DR. CHARLES W. SMITH, B. L. NEAL, C. S. KELLY, REV. C. P. PAYNE, DR. J. T. FIKES, JOE KNOX, SR., JOE KNOX, JR., MILTON BARNES, ALFONSO CLARK, R. H. HOWZE, AND E. H. SMITH,

Petitioners,

versus

L. M. COX, REGISTRAR,

Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

THE OPINION BELOW.

The opinion of the United States Court of Appeals for the Fifth Circuit has not yet been printed in Federal Reporter, but it is printed in full in the record (R. 24).

JURISDICTION.

The jurisdiction of this Court is invoked under Section 1254 (1) of Title 28 of United States Code Annotated. The United States Court of Appeals "has decided a Federal question in a way probably in conflict with applicable decisions of this Court" (Supreme Court Rule 38, Paragraph 5, b).

Judgment was entered in this cause by the United States Court of Appeals June 21, 1951 (R. 32).

STATEMENT OF CASE.

Petitioners, colored citizens of Forrest County, Mississippi, both for themselves and all other colored citizens of the County qualified to register and vote in elections—Federal, State and local—filed their complaint in the District Court against respondent Registrar for his refusal to register colored citizens of the County to vote. They charged that the Board of Supervisors of the County in November and December, 1949, by proper orders directed respondent Registrar of the County to make a new registration of voters to be used in all elecations to be held in the County after June 1, 1950, and that thereupon both white citizens and colored citizens of the County began to apply to Registrar to be allowed to register. These petitioners and all other colored citizens so applying to register were examined by Registrar as to the meaning of certain sections of the Constitution of

Mississippi, and Registrar pretended to be dissatisfied with their answers and refused to allow them to register. He did not and does not examine white citizens so applying as to the meaning of the State Constitution; but he does so examine all colored citizens so applying; and, by such discrimination, he has allowed not more than 50 colored citizens of the County to register up to April 11, 1950, when the complaint was filed, while allowing several thousand white citizens to register during the same period. They charged that there are almost as many colored citizens as white citizens in the County.

Section 244 of the Constitution of Mississippi provides that every elector shall "be able to read any section of the Constitution of this State; or he shall be able to understand the same when read to him, or give a reasonable interpretation thereof", while a clarifying statute enacted by the Legislature of the State, Section 3213 of Mississippi Code of 1942, provides that "a person shall not be registered unless he be able to read any section of the Constitution or, in case he cannot read, unless he be able to understand any section thereof when read to him or give a reasonable interpretation thereof". Still another clarifying statute, Section 3235 of the Code, provides that "every inhabitant of this State * * * * who is able to read any section of the Constitution of the State, or, if unable to read the same, who is able to understand the same when read to him, or give a reasonable interpretation thereof * * * * shall be entitled to vote". Petitioners charged that all of them are able to read any section

of the State Constitution and that some of them are college-trained and professional men and that Registrar has not the right to so examine them and other colored citizens able to read any section of the Constitution and that his so examining them is designed solely to prevent them from registering and voting and that thereby they are prevented from registering and voting.

They charge further that certain statutes of the State of Mississippi provide for an appeal from the action of Registrar in denying citizens the right to register to vote but that such statutes contemplate that such denials shall be in good faith and that therefore only in isolated cases would resort to them be had and that such statutes do not contemplate appeals where denials are based on gross misconstructions of the requirements of the Constitution and are made on a wholesale scale for the purpose of the disfranchisement of certain whole categories of citizens of the County; and they charge that under the circumstances existing they do not have to exhaust such appeal remedies before asking assistance of the Federal Equity Courts and that, if they should be required to exhaust such remedies, a burden would be placed on them not contemplated by the laws of the State of Mississippi or of the United States (R. 9).

They then prayed for injunctive relief against respondent Registrar to restrain him from subjecting them and other colored citizens of the County to tests different from the tests to which he subjects white

citizens of the County and commanding him to register them and colored citizens generally applying as he registers white citizens and specifically restraining him from subjecting them and colored citizens generally to tests involving the meaning of the Constitution of Mississippi where such citizens can read any section of the Constitution; and they prayed for other relief, if any, to which they might be entitled.

To the complaint respondent Registrar interposed six defenses (R. 11, 12, 13), five of which being challenges to the complaint on its face and the remaining one being a factual denial; and the cause was heard on the five challenges, without proof, in the District Court and was dismissed (R. 16); and it was also heard on such challenges in the United States Court of Appeals where four of the five challenges were disallowed and one allowed, that one being respondent's third defense that, the State-provided remedies by appeal from Registrar's refusal to register petitioners not having been exhausted, their suit could not be maintained (R. 11, 24, 32).

ERROR RELIED UPON.

The United States Court of Appeals erred in holding that petitioners and other colored citizens, denied the right to register, must first exhaust their State-provided remedies by appealing before seeking Federal Equity relief.

ARGUMENT.

I.

Petitioners did not have to Exhaust their State-Provided Remedies before Seeking Relief in Federal Court.

The facts involved are undisputed, so that there are almost as many colored citizens in Forrest County, Mississippi, as there are white citizens therein. Several thousand white citizens of the County were allowed by Registrar to register to vote during the same period of time in which he allowed not more than 50 colored citizens to register, which was between December, 1949, and April 11, 1950. Both classes appeared before Registrar and asked to be allowed to register; but Registrar, acting under color of Section 244 of the Constitution of Mississippi, examined all colored citizens applying as to the meaning of certain sections of the State Constitution and pretended to be dissatisfied with their answers incident to such examinations and refused to allow them to register. He never examined, or examines, white citizens in that way; and he registers them as they apply. Such idea of so examining colored citizens was a mere design, a pretext, in short, a fraud, on his part to prevent colored citizens from registering and voting simply because of their race and color; and it did, and does, prevent them from so registering and voting.

Section 3224 of the Mississippi Code of 1942 provides that "any person denied the right to register

as a voter may appeal from the decision of the Registrar to the board of election commissioners by filing with the Registrar on the same day of such denial or within five days thereafter a written application for appeal". Section 3226 provides that the commissioners "meet * * * * on the first Monday in October after appointment (they are appointed every two years) and remain in session * * * * so long as business may require" and that they "shall hear and determine all appeals from the decision of the Registrar of their county, allowing or refusing the applications of electors to be registered". Section 3113 provides that "on the third Monday in July prior to any regular election * * * * the commissioners of election shall meet at the office of the Registrar and carefully revise the registration books * * * * and shall register the names of all persons who have duly applied to be registered and have been illegally denied registration". Section 3227 of the Code provides that "cases on appeal shall be heard by the board of election commissioners *de novo*, and oral evidence may be heard by them; and they have power to subpoena witnesses and * * * * to send for papers" and that "the decisions of the commissioners in all cases shall be final as to questions of fact, but as to matters of law they may be revised by the Circuit and Supreme Courts". Section 3228 provides that "any elector aggrieved by the decision of the commissioners shall have the right to file a bill of exceptions thereto to be approved and signed by the commissioners, embodying the evidence in the case and the findings of the commissioners, within two days after the rendition of

the decision, and may thereupon appeal to the Circuit Court upon the execution of a bond * * * * in the sum of $100.00, payable to the State and conditioned to pay all costs in case the appeal shall not be successfully prosecuted". Section 1162 of the Code provides that one appealing from the Circuit Court to the Supreme Court of the State "shall give a bond to the opposite party * * * * in the penalty of $500.00 conditioned for the payment of all costs of appeal in case the judgment or decree be affirmed".

It is seen, therefore, that each individual colored citizen applying to register and being denied that right, and there are thousands of them qualified to register, and virtually every one is denied registration on account of race and color, must take three steps under the statutes to vindicate his right: (1) He must appeal to the election commissioners by making a written application therefor; (2) he must then, losing there, appeal to the Circuit Court (a) by preparing and presenting to the election commissioners a bill of exceptions embodying the evidence and the commissioners' decision, (b) by giving a cost bond in the penalty of $100.00, and (c) with the Circuit Court without any discretion as to the facts; and (3) he must then, losing in the Circuit Court, appeal to the Supreme Court of the State on the same record of facts, giving a cost bond in the sum of $500.00.

Every officer is presumped to do his duty according to law; and the Legislature, therefore, contemplated and presumed when adopting said appeal statutes that

the Registrar of voters would not, through race prejudice and under a mere pretext and a sham, disfranchise nearly half of the population of the County by refusing to register them and force thousands of the County's citizens, and its poorest citizens at that, to have resort to said appeal statutes to vindicate their rights. Rather, the Legislature presumed that the Registrar would act in good faith and, therefore, that only in isolated cases would a citizen be required to appeal to said three tribunals, in which instance an intolerable burden would not be imposed by the operation of said three appeal statutes.

A group of colored citizens, having been through fraud denied the right to register, cannot as a whole or a body appeal to the election commissioners and then to the Circuit Court and then to the Supreme Court and thus, by one proceeding and the payment of only one attorney's fee, have the matter decided once for all time for the thousands of colored citizens so disfranchised by the Registrar, as is the case of a few, for all, having resort to Federal Court for injunctive relief for all and paying only one attorney's fee. As stated, each separate individual colored citizen, of the several thousand of them, must appeal and take the three steps, so that there would have to be several thousand suits. They could not prepare bills of exceptions and brief their cases and properly present them against the State's attorneys and the dozens of volunteer attorneys, as shown by the number of attorneys representing Registrar in this case, so that

each one would have to employ and pay an attorney; and this Court can conceive that $100.00 would be a very small fee for representing in each instance through the three Courts; and that amount of money multiplied by several thousand, the number of eligible Negro citizens, would in the aggregate make a burden on a poor and unfortunate people that would be staggering and unconscionable and utterly unthinkable, that in addition to each one's having to give two cost bonds. This Court can know, and doubtless does know, that our Negroes of the South are, as a whole, wretchedly poor; and to have a crushing burden like that cast upon them, through sheer fraud, because of race prejudice, is enough, it would seem, to shock the conscience of a Court of Equity and to galvanize it into activity, even if it were a case of first impression, utterly without precedent.

The fact is, however, that the several thousand colored citizens of the County would not, for they could not, assume this staggering burden; and the result would be that, should that be their only remedy, the great rank and file of colored citizens of the County would be disfranchised, through the fraud of the Registrar, because of their race and color; and that itself, it would also seem, would be sufficient to shock the conscience of a Court of Equity and to galvanize it into activity.

The rule is recognized that, generally speaking, a suitor is required to exhaust his administrative remedies in an effort to get relief, and fail, before re-

sorting to Equity Courts for relief; but that rule, like most other rules of human conduct, has well-defined exceptions; and it is the exceptions that are relied on here.

DISCRETION.

It is a matter within the sound discretion of Equity Courts, based upon the peculiar facts in each case, as to whether or not a suitor is required to exhaust his administrative remedies before receiving aid in such Courts.

In *United States et al. v. Abeline & Southern Railway Co. et al.*, 265 U. S. 274, 44 S. Ct. 565, 68 L. Ed. 1016, this Court held that whether the lower Court should have denied relief in that instance until all possible administrative remedies had been exhausted was a matter which called for the exercise of its judicial discretion.

That was a case where the Interstate Commerce Commission's Division 4, consisting of four members, made an order affecting named appellee and others. The whole commission consisted of 11 members. The order was not to become effective until the lapse of 37 days. A rehearing before the whole commission was available to appellees, and a suspension of the order could have been had pending such hearing by the whole commission. Appellees did not ask for a rehearing but as plaintiffs filed this cause for injunc-

tive relief; and they were met with a motion to dismiss because the suit was premature, that the carriers should have exhausted their plain administrative remedy before suing. The lower Court disallowed the motion and tried the cause and awarded the relief asked for; and this Court, on appeal, affirmed the lower Court and said in part:

> "Whether it (the lower Court) should have denied relief until all possible administrative remedies had been exhausted was a matter which called for the exercise of its judicial discretion. We cannot say that, in denying the motion to dismiss, the discretion was abused."

That was a case where no fraud or other bad faith was involved, where only one appeal had to be made, and where the railroad companies would not have been deprived of any right while making the appeal; and yet it was held that the matter of affording, or not affording, relief until the administrative remedy should be exhausted was within the sound discretion of the Court. In the instant case, what amounts to fraud is involved, three appeals at great expense and delay are involved, and during the long delay petitioners and other colored citizens would be denied the right to vote as given to them by the Constitutions and laws of both the State and the United States; and yet they are told that discretionary powers on the part of the Courts of Equity and conscience cannot be exercised in their behalf.

FRAUD.

Johnson v. Wells Fargo, 239 U. S. 234, 36 S. Ct. 62, 60 L. Ed. 243, is in point. There, Wells Fargo & Company sued Johnson, Treasurer of the State of South Dakota, to enjoin the collection of certain taxes assessed against the company. The District Court dismissed the case, but the Circuit Court of Appeals reversed the District Court and remanded the cause with directions to grant the injunction; and appeal was made to this Court. This Court sustained the Circuit Court of Appeals and said in part:

> "The contention is made that there is no ground for equity jurisdiction and that therefore the bill should have been dismissed. This Court has frequently held that a bill will not lie in the Federal Courts to enjoin the collection of State taxes where a plain, adequate and complete remedy at law has been given to recover back illegal taxes, and the attack upon the assessment is based upon the sole ground that the same is illegal and void. * * * But in the present case, it is alleged not only that the assessment was unwarranted by the law, but that the manner of making the assessment amounted to fraud upon the constitutional rights of the express companies, or such gross mistake as would amount to fraud, thus averring a distinct and well-recognized ground of equity jurisdiction."

FRAUD AND INADEQUACY OF REMEDY.

The case of *United States v. Board of County Commissioners of Osage County, Oklahoma, et al.*, 251 U. S. 128, 40 S. Ct. 102, 64 L. Ed. 184, is in point here. There the taxing authorities of Osage County, Oklahoma, greatly overassessed lands in the County belonging to the noncompetent Osage Indians and underassessed the lands belonging to people other than the Indians. The United States sued in Federal District Court to restrain certain County officers from enforcing the taxes so assessed and levied, charging that "the assessments so made by said assessors were made in such an arbitrary and capricious manner as to amount to constructive fraud upon the taxpayers and that the overvaluations made by said assessors were so grossly excessive as to justify the interference of a Court of equity". The District Court dismissed the cause; and appeal was made to the Circuit Court of Appeals where it was again decided against plaintiff, that Court basing its decision on the ground that, "as the State law afforded adequate means to the United States and the noncompetent Indians to correct errors in assessing taxes, there was no basis for invoking relief from a Court of Equity". The cause then came on to this Court, and this Court reversed the lower Courts and said in part:

> "As the wrong relied upon was not a mere mistake or error committed in the enforcement of the State tax laws, but a systematic and intentional disregard of such laws by the State officers for the purpose of destroying the rights of the whole class of noncom-

> petent Indians who were subject to the protection of the United States, it follows that such class wrong and disregard of the State statute gave rise to the right to invoke the interposition of a Court of Equity in order that an adequate remedy might be afforded."

The report of the case does not say what remedy was afforded by the State statutes for the noncompetent Indians and the United States for the correction of the fraudulent assessment made by the State officers, but the remedy certainly was not more difficult and intricate and expensive than is the remedy afforded these petitioners and other colored citizens against the bad faith amounting to fraud on the part of Registrar. Also, the effect of the wrong there was to rob the noncompetent Indians of their land only, while the effect of the wrong here is to rob the colored citizens involved of their right to participate in the operation of their government and is a denial of their dignity as men, a denial that has caused revolutions in governments. They cannot even sit on the jury because they are not qualified electors; and, if one of them is tried in the Courts for his property or his liberty or even for his life, his race and color are not represented on the jury by which he is tried. He is tried by a jury of white citizens who alone, by reason of respondent's fraud, can qualify for jury service. His very all is in their hands. Nobody in authority is afraid of him or feels forced to respect him, for he has not the formidable Damascus blade of suffrage to defend himself with. He is somewhat in the position

of the dying lion that the braying jackass kicked and stamped; and it would seem that, if fraud in the Osage Indian case would give rise to the interposition of a Federal Court of equity to afford an adequate remedy there, fraud in the instant case where infinitely more is involved would justify this Court in exercising its judicial discretion to extend aid to these petitioners and other colored citizens that an adequate remedy may be afforded them.

Wilson, County Collector of Taxes, et al. v. Illinois Southern Ry. Co. et al., 263 U. S. 574, 44 S. Ct. 204, 68 L. Ed. 465, is also in point. There the Railway company sued in the Federal District Court the tax collectors of five Illinois Counties, alleging that its property was erroneously and fraudulently overvalued, out of all proportion to the other taxable property in the State and asked for injunctive relief. It alleged further that, if the taxes assessed could be recovered at all after payment, it would be onliy by a multiplicity of suits against the taxing bodies of the five Counties. The relief asked for was granted by the District Court; and the defendants appealed to this Court, where the lower Court was affirmed, this Court stating that the remedy afforded of suing in the five Counties to recover back the money so wrongfully assessed, should it be paid, was not adequate. The Court also held that an appeal to the Circuit Court and the Supreme Court from the assessment as made by the tax commission, where the commission was charged with fraud, might not be adequate and that the adequacy of remedy must be clear.

The holding of this Court in *Lane v. Wilson, et al.*, 307 U. S. 268, 59 S. Ct. 872, 83 L. Ed. 1291, is decisive of the question here involved. Lane, a Negro citizen of Oklahoma, applied to the proper authorities to register as a voter. He was denied such right because of his race and color, and he brought suit against such authorities for damages. Both the District Court and the Circuit Court of Appeals denied his suit, and he then appealed to this Court. The Oklahoma Statute on the subject provided that one denied the right to register might have such action on the part of the registrar expeditiously reviewed by the District Court of the County of the aggrieved party by filing his petition therein within 10 days and then by appealing to the Supreme Court of the State if aggrieved by the decision of the District Court. Lane did not appeal to the District Court. Rather, he sued in the proper Federal District Court for damages and, losing, appealed to the Circuit Court of Appeals and lost again. He then appealed to this Court where it was urged that he was required to exhaust his State remedy before resorting to Federal Court; but this Court held that he was not required to exhaust such State remedy, saying in part in so holding:

> "To vindicate his present grievance the plaintiff did not have to pursue whatever remedy may have been open to him in the State Courts. Normally, the State legislative process, sometimes exercised through the administrative powers conferred on State Courts, must be completed before resort to Federal Courts can be had. Prentiss v. Atlantic Coast Line Co., 211 U. S. 210, 29 S. Ct. 67, 53 L. Ed. 150. But the State

procedure open to one in plaintiff's situation (Section 5654) has all of the indicia of a conventional judicial proceeding and does not confer upon the Oklahoma Courts any of the discretionary or initiatory functions that are characteristic of administrative agencies. See Sec. 1 of Article IV of the Oklahoma Constitution, Okl. St. Ann.; Oklahoma Cotton Ginners' Ass'n v. State, 174 Okl. 243, 51 P. 2d 327. Barring only exceptional circumstances, see, e. g. Gilchrist v. Interborough Rapid Transit Co., 279 U. S. 159, 49 S. Ct. 282, 73 L. Ed. 652, or explicit statutory requirements, e. g. 48 Stat. 775, 50 Stat. 738, 28 U. S. C. A. Sec. 41 (1), 28 U. S. C. A. Sec. 41 (1), resort to Federal Court may be had without first exhausting the judicial remedies of the State Courts. Bacon Rutland R. R., 232 U. S. 134, 34 S. Ct. 283, 58 L. Ed. 538; Pacific Tel. & Tel. Co. v. Kuykendall, 265 U. S. 196, 44 S. Ct. 533, 68 L. Ed. 975."

The State-provided remedy afforded petitioners and other colored citizens in the instant case is not the equal of that afforded by the State of Oklahoma in the *Lane* case. There, the trial in the first instance was to be before a Court presided over by a learned man where the facts forming the basis for the judgment were to be adduced under such Judge's supervision and decided by a jury under the studied instructions of the Judge, while here the trial in the first instance where the facts are unalterably established, is before three commissioners, usually laymen, not guided in their deliberations by a man learned in the law, who themselves determine what evidence shall be heard and how it shall be presented and who then pass on the evidence. Their finding of fact is final. The Circuit

Court and the Supreme Court on appeal cannot change it or set it aside. The Courts can only say what law is applicable to the facts presented by the commissioners and the effect of that law on the rights of the parties interested. And the record made by the election commissioners and the Courts is *res judicata* of the questions involved. If the commissioners should find as a fact that the parties interested can not read any section of the Constitution and that they are not able to understand the same or give a reasonable interpretation thereof, when read to them, such finding would be final; and the two Courts would have no discretion but to hold that they are not entitled to register and vote; and would they then be able to raise the same issue in the Federal Courts of equity? This, of course, is a strained hypothesis; but the fraudulent practice on the part of Registrar that brought the colored citizens of the County to their present deplorable plight was strained also, for right-thinking people could not have conceived of his doing the such.

What discretionary or initiatory functions are conferred upon the election commissioners that would guarantee rejected colored electors a fairer trial than, or as fair a trial as, they coud get by a remedy wholly judicial or a fairer trial than that afforded Lane by the Statutes of Oklahoma? The election commissioners do have a discretion, a more or less unbridled discretion, but it is a dangerous discretion. The lower Court said in its opinion (R. 30) that "the commissioners are sworn officers and presumably will give them (rejected colored electors) a fair hearing." Respond-

ent Registrar likewise is a sworn officer and is presumed to give colored citizens a fair hearing, but a most shameful result tells of a misplaced presumption. An unholy hysteria can easily affect wrongly a group of the best of people with an unbridled discretion. Certainly the two Courts, the Circuit and the Supreme, to which appeals are taken from the commissioners, have no discretionary or initiatory functions in the matters. The State procedure open to these petitioners and other colored citizens discriminated against has all of the indicia of a conventional judicial proceeding, with the disadvantage of having a body of laymen, with an unbridled and dangerous discretion, to determine the facts that form the basis for a final judgment in their most vital matter.

CONCLUSION.

In view of the fact that it is within the sound judicial discretion of the Court, based on the peculiar facts in a given case, as to whether or not the Federal Equity Courts will relax the rule requiring the exhaustion of State-provided remedies before taking jurisdiction of a suitor's cause; and in view of the fact that fraud is a distinct and well-recognized ground for equity jurisdiction; and in view of the fact that this Court has held that "a systematic and intentional disregard of such laws for the purpose of destroying the rights" of a whole class of unfortunates "gave rise to the right to

invoke the interposition of a Court of equity in order that an adequate remedy might be afforded"; and in view of the fact that the relaxing of the general rule in the instant case would avoid a multiplicity of suits, thousands of them, requiring the expenditure of an enormous amount of money by a poor and unfortunate people, it would seem that petitioners and the other colored citizens for all of whom this suit is prosecuted should be given the benefit of whatever sound judicial discretion is within the power of this Court and that they should not be required under the circumstances to exhaust their State-provided remedies before being afforded relief by the Federal Equity Courts from the positive wrong and fraud of respondent Registrar.

Respectfully Submitted,

....., Attorney for Petitioners.

THOMAS C. HANNAH,
Of Counsel.

FILED
OCT 24 1951
CHARLES ELMORE CRO
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1951

No. 335

REV. I. C. PEAY, B. F. BOURN, REV. J. H. MAYS, R. C. JONES, DR. CHARLES W. SMITH, B. L. NEAL, C. S. KELLY, REV. C. P. PAYNE, DR. J. T. FIKES, JOE KNOX, SR., JOE KNOX, JR., MILTON BARNES, ALFONSO CLARK, R. H. HOWZE, AND E. H. SMITH,

Petitioners,

versus

L. M. COX, REGISTRAR,

Respondent.

RESPONSE OF LUTHER M. COX, REGISTRAR, TO PETITION FOR WRIT OF CERTIORARI.

E. J. CURRIE,
M. M. ROBERTS,
Of Attorneys for Appellee.

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Petitioners,

versus

L. M. COX, REGISTRAR,

Respondent.

RESPONSE OF LUTHER M. COX, REGISTRAR, TO PETITION FOR WRIT OF CERTIORARI.

The respondent respectfully represents and shows to the Court:

I.

OBJECTIONS TO SUFFICIENCY OF PETITION AND RECORD FOR WRIT OF CERTIORARI.

1. The petition does not conform to the requirements of Rule 38.

(a) Under said rule, a petition for review on writ of certiorari shall be accompanied by a certi-

fied transcript of the record in the case, including the proceedings in the court to which the writ is asked to be directed, but this cause appears incomplete insofar as this respondent is concerned, he not having been furnished with record of that taking place in the Circuit Court of Appeals for the Fifth Circuit, in Cause Number 13,494, other than the opinion and judgment of said court dated June 21, 1951. (R. 23, 29.)

(b) The petition does not conform to that part of said Rule 38 which requires that the petition shall contain a summary and a short statement of the matters involved; and the supporting brief is not direct and concise.

(c) The petition does not assign "special and important reasons" for writ of certiorari, as required by Rule 38 (5).

(d) There is a total absence of conflict of decisions of the Circuit Court of Appeals with decisions of other like courts, and no important question of federal law is involved, and there is total absence of substantial federal question or case of gravity and importance, to justify granting petition.

2. The supporting brief does not conform to Rule 27 of this Court, in that a concise statement of the grounds on which the jurisdiction of the court is invoked is not furnished, and neither is there a concise statement of the case containing all that is

material to the consideration of the presented question with adequate references to the printed record.

3. Findings of fact concurred in by the trial court and the Circuit Court of Appeals will be accepted by the Supreme Court, unless clear error is shown, and no such error exists in this record. This "two-court rule" operates as well upon consideration of applications for certiorari as in the decision of cases upon the merits. The trial court and the Circuit Court of Appeals in this cause were in accord on all issues of law and the findings of fact. The petition for writ of certiorari should be denied.

> "The two courts below are in agreement as to the inferences fairly to be gathered from the facts, and their findings are not to be disturbed unless clearly erroneous." *United States of America v. Commercial Credit Company*, 76 L. Ed. 978, 268 U. S. 63.
>
> "Both courts below, after painstaking examination of the evidence, found there was such privity or knowledge and accordingly ruled that the claim for limitation must be denied. We accept this concurrent finding. There was sufficient evidence to support it." *Alexander, Administratrix, et al. v. Spencer Kellogg & Sons, Inc.*, 76 L. Ed. 903, 285 U. S. 502, 510.
>
> "The Circuit Court of Appeals reexamined the findings in the light of the evidence and accepted them. It must be a strong case in which this court will set aside these concurrent findings of two courts. We think this is not such a case."

Goodyear Tire & Rubber Company, Inc. v. Ray-O-Vac Company, 88 L. Ed. 721, 321 U. S. 275, 278.

"Some of these findings have been challenged. But we do not stop to examine the evidence. We accept those findings, as they were concurred in by two courts and no clear error is shown." *Anderson v. Abbot, et al.,* 88 L. Ed. 793, 321 U. S. 349, 356.

II.

RESPONSE PROPER TO PETITION FOR WRIT OF CERTIORARI.

"Jurisdiction".

Under this heading, it is claimed that the provisions of Section 1254 (1) of Title 28, United States Code Annotated, constitute basis for jurisdiction of this Court, and it is further stated that the United States Court of Appeals "has decided a Federal question in a way probably in conflict with applicable decisions of this Court"; and in support of this last statement there is identified Supreme Court Rule 38, Paragraph 5, (b). There is nothing in the pleadings or in the brief to cause any of these laws and rules to be invoked as basis for the claimed jurisdiction of this Court.

"Statement of Case".

Petitioners correctly state that the controversy involves registration for voting in Forrest County,

Mississippi; but it is not true, as the statement of the case of petitioners discloses, that all colored applicants had dissatisfactory showings and that the registrar refused to allow them to register. This statement is contradicted by the further statement that at the time of the filing of the petition fifty colored citizens of the county had registered to vote.

And, in addition to the foregoing, it should be stated that the original petition of the petitioners here involved admitted that the administrative remedy had not been followed, and no attempt had thereat had been made, all to constitute an admission of petitioners that they had not attempted to comply with the Laws of Mississippi as related to their rights and the administrative remedies available to them; and by way of excuse, the original petition simply provides that: "To require plaintiffs and others so to exhaust their statutory remedies by appealing before seeking relief in this Court, under the circumstances set forth herein, would place a burden upon them not contemplated by the laws of the State of Mississippi or of the United States". (R. 6-7.) Stated differently, there is a plain admission by petitioners that they have not complied with or conformed to the administrative laws of Mississippi, and they seek to avoid this conformity without any reason or judicial decision to support them thus so to do.

"Error Relied Upon".

Under this heading, petitioners contend that the Circuit Court of Appeals for the Fifth Circuit erred in holding that petitioners who had been denied the right to register must first exhaust their state provided remedies before they could seek federal equity relief. It is this one single contention which constitutes the basis for the petition to this Court, and it should be stated that this Court has uniformly held that administrative remedies must be exhausted before seeking federal equity relief in a case of this kind. The only exceptions to this thinking has had to do with the remedies of the state being judicial, and not administrative in character or nature, and such is not the case in Mississippi, because any person denied the right to register as a voter may appeal from the decision of the registrar to the Board of Election Commissioners by filing with the registrar on the same day of such denial or within five days thereafter a written application for appeal. This is so provided for in Section 3224 of the Mississippi Code of 1942, and recognized by petitioners in their argument on petition of which this constitutes response. Regardless of how arbitrary one particular official may be, this does not constitute any justification for the conclusion that another administrative agency will have the same attitude, and it is this thinking which has caused the jurisprudence of this Court to be as it is as related to exhaustion of administrative remedies before having right to maintain injunction suit for relief in equity.

III.

ARGUMENT.

A. Petitioners did have to Exhaust Administrative Remedies Provided For in State Statutes before Seeking Equitable Relief in Federal Court.

This case was disposed of in the trial court on motion, and the Circuit Court of Appeals for the Fifth Circuit followed the trial court in conclusion that petitioners did have to exhaust administrative remedies provided for under the laws of Mississippi before seeking equitable injunctive relief in the Federal court. The machinery set up in Mississippi for registration and voting contemplates a registration book in each county as provided through Section 3210 of the Mississippi Code of 1942; and Section 3212 of said Code provides that the registrar shall register voters who may call at his office therefor; and there are limitations against persons who are entitled to register to vote, and it is provided through Section 3222 of said Code that in case of confusion a new registration may be required. Section 3235 of said Code identifies those who are entitled to vote; and Section 3205 of said Code provides for the appointment of election commissioners; and Section 3224 of said Code provides for appeal by person denied registration, and the language of that section of the Mississippi Code of 1942 is as follows:

> "Any person denied the right to register as a voter may appeal from the decision of the

registrar to the board of election commissioners by filing with the registrar, on the same day of such denial or within five days thereafter, a written application for appeal."

Section 3226 of the Mississippi Code of 1942 provides for meetings of commissioners to hear appeals, and the part of said section applicable here is as follows:

"The commissioners shall hear and determine all appeals from the decisions of the registrar of their county, allowing or refusing the application of electors to be registered; and they shall correct illegal or improper registrations, and shall secure the elective franchise, as effected by registration, to those who may be illegally or improperly denied the same."

Section 3227 of the Mississippi Code of 1942 provides for an appeal from the board of election commissioners, and then there may be an appeal to the Supreme Court of Mississippi. Stated differently, the machinery is definitely set up for grievances to be disposed of by an administrative body on appeal from what might be done by the registrar, and these appeals can be taken to the administrative officer without bond, so there will be no costs taxed against a party or parties aggrieved.

Our opposition is talking about appeals to the commissioners without recognizing that it costs nothing to get the commissioners to pass upon the rights of persons seeking to register. We are confident, as

was the trial court, and as was the Circuit Court of Appeals, that if any single person feels aggrieved at the conduct of the registrar he or she may become properly registered by requesting an appeal to the commissioners and going before the commissioners when they convene. There is nothing fraudulent in the conduct of the registrar, and it is not an undue burden on any individual that he make a simple request for a larger body to pass on his rights. This is what happens in every administrative plan appearing with all civilized countries. We have our National Labor Relations Board, with field representatives and hearing officers and regional directors who deal with stable rights of parties before the Board itself ever considers that which goes on. The point is that the courts are uniform in holding that administrative remedies must be exhausted.

> "The petition for rehearing in the above stated cause is hereby denied. Exhaustion of state remedies is a rule of self restraint formulated by the Federal Courts and is not influenced by State practice." *Cook v. Davis,* (C. C. A. 5th Cir.), 178 Fed. 2d 595. Certiorari denied, 340 U. S. 811, 95 L. Ed. 21.

This Court, in the case of *Gladys Noel Bates, et al. vs. John C. Batte et al.,* (C. C. A. 5th Cir.), 187 Fed. 2d 142 under date of October 8, 1951 denied petition for writ of certiorari. In that suit there was involved the question substantially as here and charges of discrimination and other charges were made, but the trial court and the Circuit Court of

Appeals had taken the position that the administrative remedies must first be exhausted before resort could be had to the federal court in equity for injunctive relief.

"Discretion".

Under this heading petitioners contend that it is a matter within the sound discretion of equity courts to determine whether or not a suitor is required to exhaust his administrative remedies before receiving aid in such courts. There is cited as authority for this view the case of *United States, et al. vs. Abilene and Southern Railroad Co., et al.*, 265 U. S. 274, 44 Sup. Ct. 565, 68 L. Ed. 1016. In said case, as in the case now being presented the trial court in its discretion required exhaustion of administrative remedies, and the Circuit Court of Appeals involved upheld the trial court, and in that case this Court sustained petition for writ, but on hearing held that it could not be determined on appeal that the denial of relief by the trial court constituted an abuse of discretion.

"Fraud".

Under this heading, there is cited for petitioners the case of *Johnson vs. Wells Fargo and Co.*, 239 U. S. 234, 36 Sup. Ct. 62, 60 L. Ed. 243. That case involved the Treasurer of the State of South Dakota and a taxpayer seeking injunctive relief in an equity court against payment of certain taxes. In that

case there was not involved any administrative remedy or any failure on behalf of the litigant to exhaust his administrative remedy.

"Fraud and Inadequacy of Remedy".

Under this heading, and in support of alleged fraud, the case of *United States vs. Board of County Commissioners of Osage County, Okla., et al.,* 251 U. S. 128, 40 Sup. Ct. 102, 64 L. Ed. 184, is cited. In that case there was not involved the question of exhaustion of administrative remedies. The theory of administrative law is that one must be wrongfully denied relief under the administrative machinery before he or she may go into a court of equity to require contrary conduct or action. There is also cited the case of *Wilson, County Collector of Taxes, et al. vs. Illinois Southern Railroad Co., et al.,* 263 U. S. 574, 44 Sup. Ct. 204, 68 L. Ed. 465. There was involved in that case alleged fraudulent over-valuation of property. In that case the administrative remedy had been exhausted. There was nothing left but judicial remedies, and the district court simply held that in one action injunctive relief could be had against the collection of the tax in five different counties, and thereby avoid a multiplicity of suits; and there is cited the case of *Lane vs. Wilson, et al.,* 307 U. S. 268, 59 Sup. Ct. 872, 83 L. Ed. 1291, and it is claimed that this case "is decisive of the question here involved". There, Lane, a negro citizen of Oklahoma, applied to the proper authorities to register as a voter. He was denied such right, allegedly

because of race discrimination, and he brought suit against such authorities for damages. Both the district court and the Circuit Court of Appeals denied his suit, and he then appealed to the Supreme Court. That case involved an Oklahoma statute, and the Oklahoma statute was not explicit, and the court concluded that in the absence of explicit statutory requirements, the state remedy would not have to be exhausted. The court recognized in that case that under the Oklahoma law, when registration is denied, one must appeal to the district court of the county involved, and the court held that one may go into the federal court without appealing to the county court, *"since the procedure indicated is judicial rather than administrative."* Stated differently, under the Oklahoma Act, if the registrar makes a mistake the party no longer has any administrative agency to which he may go, but he must appeal to the district court, and there is no administrative remedy to exhaust as exists in Mississippi. It may be true that if these appellants had appealed to the election commissioners and had an adverse ruling, they may not, under the case of *Lane vs. Wilson,* be required to appeal to the circuit court. In this, we are inclined to think that the *Lane vs. Wilson* case does not require of such interpretation, but it is surely true that under the Oklahoma Act the complaining party had exhausted the administrative remedy before he went into the federal court, because there was no other administrative agency to which he could go. His next move was to the dis-

trict court, and he elected instead to go to the federal court.

In presenting this case to the Circuit Court of Appeals, petitioners identified the case of *Cook, et al. vs. Davis,* 178 Fed. 2d 595, but for some reason the election was not to mention that case to this Court.

B. Affirmative Argument Supporting Our View that the Trial Court and the Circuit Court of Appeals both Correctly Recognized that Petitioners Must Exhaust Administrative Remedies.

The sections of the Mississippi Code applicable appear in petitioners' brief and herein. Under the Mississippi law the registrar is named to register voters who appear before him and prove themselves qualified to register as electors. Section 3212, Mississippi Code of 1942. Section 3213 of said Code provides that no person is to register unless he can read. Section 3205 of said Code provides for the appointment of election commissioners. These commissioners are to be appointed two months before every general election of representatives in Congress. The county commissioners are appointed by the State Board of Election Commissioners. These commissioners take an oath just as office holders take oaths under the Constitution of Mississippi. Their separate oaths of office are filed with the Clerk of the Chancery Court. If a person is aggrieved at a decision of the registrar, he may appeal to the county election commissioners within five days, and the

hearing before the county election commissioners is a hearing *de novo*. Any person aggrieved at a decision of the commissioners has right to file bill of exceptions. The machinery in Mississippi is complete and the remedy is adequate through the administrative agencies set up to care for the very subject matter involved in this litigation.

The Mississippi courts have uniformly held that remedies thus provided are not of a judicial nature, but are strictly administrative in their scope. Some of the best authorities in this direction in Mississippi have to do with the administration of schools, and some of the authorities supporting this view are *State v. Miller,* 162 Miss. 149, 137, So. 737, and *Clark v. Board of Trustees,* 117 Miss. 234, 78 So. 145. The Circuit Court of Appeals for the Fifth Circuit, in the recent case of *Bates, et al. v. Batte, et al.,* 187 Fed. 2d 142, going up from the Jackson Division of the Southern District of Mississippi, held that administrative law and procedure must be first followed and exhausted before the courts are available to grant relief sought. The Court followed the decision in the case of *Cook, et al. v. Davis, supra,* to conclude as follows:

> "Without undertaking, as the parties have done in their briefs, to set these statutes out, or to draw attention, as to the district judge has done, to the features of similarity controlling his decision, it is sufficient for us to say that we regard the case of Cook v. Davis as thoroughly considered and well decided and that the

> statutes of the two states are sufficiently alike to make the decision in Cook's case dispositive of the appeal."

There is no end to the holdings of courts generally that administrative agencies must be exhausted before one may resort to the courts as here sought to be done, and this covers every field of endeavor. The Circuit Court of Appeals for the Fifth Circuit, in 1949, dealt with a case where negroes sought to by-pass the National Railroad Adjustment Board, and the court said thereof:

> "What and all that is for decision here, then is whether the fact, that appellants are Negroes and members of an all Negro labor union, entitles them, the Railway Labor Act notwithstanding, to by-pass the National Railroad Adjustment Board and sue direct in the federal courts upon grievances with their employer." *Hampton et al. v. Thompson et al.*, 171 Fed. 2d 535, (C. C. A. 5th Cir.).

We have already dealt with the case of *Lane v. Wilson*, 307 U. S. 268, 83 L. Ed. 1281. In that case the Supreme Court of the United States held that the rule with reference to exhaustion of administrative remedies should be enforced. However, in that case, there was involved a situation where the state remedy was judicial and not administrative. The Circuit Court of Appeals, in the case of *Mitchell v. Wright, et al.*, 154 Fed. 2d 294, held that the Alabama laws dealing with registration and voting were such as to require a person denied the right to reg-

ister to accept this, or appeal to the state court. The court recognized that if appellants fail to exhaust their administrative remedy, this would oust the jurisdiction of the federal court. This court, however, recognizes that administrative remedies have not been set up in Alabama, as exist in Mississippi. Said Circuit Court of Appeals said of this:

> "It is true that, under the laws of Alabama, any person denied registration has the right to appeal to the proper circuit court of the state, thence to the Supreme Court; but the remedy so provided is not deemed by us to be purely of an administrative nature; it is of the type of proceeding traditionally considered judicial. The aggrieved party may go into the state circuit court, which is a judicial court of general jurisdiction of law and equity, or into a court of like jurisdiction. A trial by jury is provided, and the court is required to charge the jury as to the qualifications of voters. The weight and effect of the evidence are for the determination of the jury. The reviewing court may enter final judgment, which shall entitle the petitioner to register as of the date of his application, but neither the circuit court nor the Supreme Court possesses the power to substitute its order for that of the registrars."

This Court, in the case of *Prentis v. Atlantic Coast Line Co.*, 211 U. S. 210, 53 L. Ed. 150, held that where a court, if it reverses a commission, has the power to substitute the order which the commission have given, then the review is legislative and

not judicial. The case now before the Court provides for administrative remedy, in that the complaining parties have right to go before the county commissioners for further administrative consideration of their rights, as we have heretofore pointed out, and this they have failed to do.

It must be recognized that certiorari cannot serve as a relief merely from an erroneous result, and such writ will not be granted merely to review the evidence or pleadings or inferences drawn therefrom. *United States vs. Johnson,* 268 U. S. 220, 69 L. Ed. 925, and *General Talking Pictures Corp. vs. Western Electric Company,* 304 U. S. 175, 82 L. Ed. 1273.

This Court is now concerned only with the question of whether the writ should be granted in order to secure uniformity of decisions between the various courts of appeal on the particular matter involved or to bring up a case involving questions of importance which it is in the public interest to have decided by this Court. There are present here none of the reasons suggested by Rule 38 (5) which might influence the Court to grant the writ. There is no conflict of decisions. There is no question of public importance not heretofore settled by this Court. On the contrary, the principles upon which the lower court's decision rests is long established and well settled.

Administrative remedies provided by state laws must be pursued and exhausted before resort may be had to obtain injunctive relief in a federal court. *Porter vs. Investors Syndicate,* 286 U. S. 461, 76 L. Ed. 1226. *Natural Gas Pipe Line Company vs. Slattery,* 302 U. S. 300, 28 L. Ed. 276. This doctrine is of special force when resort is had to the federal courts to restrain the action of state officers, or where the federal power affects state activities under our federal system. *Matthews vs. Rogers,* 284 U. S. 521, 525, 76 L. Ed. 447; *Alabama Public Service Commission vs. Southern Railway Company,* 95 L. Ed. 708 (decided May 21, 1951). No different consideration will be given by this Court because of the subject matter allegedly referring to the Federal Constitution. The courts have specifically dealt with this subject, and concluded that the judicial relief will not be granted until the prescribed administrative remedies have been exhausted. *First National Bank vs. Weld,* 264 U. S. 784, 68 L. Ed. 748; *Prentis vs. Atlantic Coast Line,* 211 U. S. 210, 53 L. Ed. 150. It should be stated that there is no difference in the application of the principle relating to administrative remedies and federal courts of equity, even if there is involved some phase of the civil rights statute or other related subject. In fact, where the remedy is administrative, and not judicial, the rule has been uniformly applied even as to cases brought under the civil rights statute. *Douglass vs. Jeanette,* 319 U. S. 157, 163; 87 L. Ed. 1324; *Henderson vs. United States,* 399 U. S. 816, 94 L. Ed. 1302.

In view of the foregoing authorities, we are confident that this Court will not grant petition for writ of certiorari. There is no cause or reason therefor. Nothing exists in this cause to make change of rule that the administrative remedies must be exhausted before the complaining parties are privileged to resort to the federal courts to obtain some mandatory federal equity action.

CONCLUSION.

The cases of *Cook vs. Davis, supra,* and *Gladys Noel Bates, et al. vs. John C. Batte, et al, supra,* have both reached this Court by way of petitions for writs of certiorari. In both instances the orders of this Court have been to deny the petitions, evidently because of the fact that in Georgia and in Mississippi there were administrative remedies which had not been exhausted. There are administrative remedies involving the subject matter of this suit which have not been exhausted by petitioners, and until these administrative remedies have been exhausted, injunctive relief is not available to petitioners. We earnestly urge upon the Court that the petition for writ of certiorari be denied.

Respectfully submitted,

E. J. CURRIE,
M. M. ROBERTS,
Of Attorneys for Appellee.

CERTIFICATE.

I, M. M. Roberts, one of the attorneys for the respondent hereby certify that I have delivered to the Honorable T. C. Hannah, of attorneys for petitioners, a true copy of the foregoing brief, on this the 11th day of October, A. D., 1951.

M. M. ROBERTS,
Of Attorneys for Respondent.

The undersigned T. C. Hannah, of attorneys for petitioners, hereby acknowledges receipt of typewritten copy of the foregoing brief on this 11th day of October, A. D., 1951.

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T. PRICE DALE.